

**REPORT - PLANNING COMMISSION MEETING
December 8, 2005**

Project Name and Number: Rock & Niles Townhomes (PLN2006-00002)

Applicant: Standard Pacific Corporation

Proposal: To consider a Finding of Site Plan and Architectural Approval, Vesting Tentative Tract Map, Private Street and Preliminary Grading Plan for a 40-unit townhouse development.

Recommended Action: Approve, based on findings, subject to conditions.

Location: 36153 Niles Boulevard, Niles Planning Area

Assessor Parcel Number(s): 507-0062-003-09 and 507-0062-004-13

Area: 2.4 acres

Owner: 507-0062-003-09, Abraham; and, 507-0062-004-13, Sinodinos

Agent of Applicant: Bo Crane, Standard Pacific Corporation

Consultant(s): David Senden, Architect, KTG Group, Inc.
Michelle Cordis, Civil Engineer, Carlson, Barbee & Gibson, Inc.
Robert Mitchell, Landscape Architect, Robert Mitchell & Assoc.
Julia Moriarty, Environmental Consultant, ENGEO, Inc.
Michael Toy, Acoustical Consultant, Charles M. Salter and Assoc.

Environmental Review: A Mitigated Negative Declaration was previously approved for this project.

Existing General Plan: Neighborhood Commercial & Medium Density Residential, 15-18 du/ac

Existing Zoning: Planned District, P-2004-81

Existing Land Use: Shopping center (Abraham parcel); vacant lot (Sinodinos parcel)

Public Hearing Notice: Public hearing notification is applicable. A total of 784 notices were mailed to owners and occupants of property within 300 feet of the site on the following streets: Rancho Arroyo Parkway, Rock Avenue, Niles Boulevard, Turpin Way, among others. The notices to owners and occupants were mailed on November 23, 2005. A Public Hearing Notice was delivered to The Argus on November 21, 2005, to be published by November 24, 2005.

In addition, 7 public hearing notices were mailed as a courtesy to interested parties.

Executive Summary: The applicant, Standard Pacific Corporation, requests consideration of Site Plan and Architectural Approval, Vesting Tentative Tract Map 7647, Preliminary Grading Plan and Private Street, for the development of a 40-unit residential townhouse project on the northeast corner of Rock Avenue and Niles Boulevard. The existing shopping center on the site will be removed and site cleared to accommodate the proposed project. The housing project proposed is consistent with the City goals and objectives in creating new, well-designed multifamily housing. Staff recommends approval of the project, based on the findings and subject to conditions.

Background and Previous Actions: In 1978, the a major portion of the project site (Abraham parcel) was developed with a 5,600 SF shopping center. Currently, the shopping center provides a variety of services and contains seven tenants: 7-Eleven (convenience store); Thai Village Video & Salon; Hair by Lucy; Step 2 This (dance studio); Hot Rods

Café; Tattle Tails (pet grooming); and, Vogue Interiors. The development of the proposed housing project would ultimately result in the displacement of these tenants.

In December 2003, on recommendation of the Planning Commission, the City Council approved a City-initiated General Plan Amendment and Rezoning of the project site to facilitate the future redevelopment of a commercial, mixed-use and/or an entirely residential project (15-18 dwelling units per acre) on the site.

In July 2005, the applicant submitted an application for Site Plan and Architectural Approval, Vesting Tentative Tract Map, Preliminary Grading Plan and Private Street to redevelop the site with a 40-unit townhouse project. The proposed project was scheduled for this hearing date to allow the applicant time to summarily vacate two right-of-way easements and two emergency vehicle access easements. Staff considers these easements minor, as they will no longer be needed if redevelopment of the site occurs. The applicant was required to first seek City Council approval of the summary vacation largely because of the easements' impact on the site design, but also because the Planning Commission's approval of the 40-unit townhouse project would be final, unless the project is denied or appealed. The City Council will consider the summary vacation of these easements on December 6, 2005. Staff will inform the Planning Commission of the Council decision.

Project Description: The applicant requests Site Plan and Architectural Approval (SPAA), a Vesting Tentative Tract Map (VTTM), Preliminary Grading Plan (PGP), and Private Street (PS) for the development of 40 townhouse units on the site. The proposed project development is summarized below:

1. 40 dwelling units. Eight multi-family structures in a Farmhouse/Craftsman-style design with a building composition of 6-, 5-, and 4-units per structure. The proposed structures are approximately 31 feet in height (two stories) from the existing grade to the proposed roof ridge. Four floor plans on two living levels are proposed: Plan 1 is 1,304 SF, 3 bedrooms, 2.5 bath; Plans 2 and 3 are 1,330 SF, 3 bedrooms, 2.5 baths; and, Plan 4 is 1,374 SF, 3 bedrooms, 2.5 baths.
2. Off-street parking. A total of 100 parking spaces are proposed: 80 side-by-side covered spaces (2 per unit) and 20 uncovered parking spaces designated for guests (includes 1 van accessible space).
3. Open space. Each dwelling unit is provided with a private open space patios. Approximately 3,300 SF of common open space is proposed.
4. Landscaping. A variety of trees, shrubs, flowering vines and groundcover are proposed. Street improvements are also proposed, including new street trees, curbs, gutters and sidewalks on Rock Avenue and Niles Boulevard.
5. Onsite Amenities. Landscaped paseos are proposed to provide direct pedestrian connections from the public sidewalk to internal units; a common open space area provides a picnic table, benches, and children's play structures.
6. Circulation/Site Access. The applicant proposes to develop a new private street system that would provide access to each unit's garage, served by two points of access: one driveway will be installed on Niles Boulevard; a second driveway will be installed on Rock Avenue.

The applicant indicates that the project—with a density at 16.5 units per acre— would serve as “a transitional link between the existing single family residences and apartment houses”. The applicant notes that the project was designed with “exteriors [that] have a mixture of siding materials including horizontal siding, shingles and stucco with a variety of roof-styles and porches”. An analysis under "Zoning Regulations" describes how the project conforms to the Planned District's regulations.

Project Analysis:

General Plan Conformance: Neighborhood Commercial/Medium Density Residential, 15-18 dwelling units per acre (du/ac), is the site's existing General Plan land use designation. Instead of a commercial or mixed-use development, the applicant has elected to redevelop the site with a multifamily residential project. A density of 16.5 du/ac is proposed, in conformance with the site's *permitted* residential land use density range (i.e., the range between the mid- and maximum-point of the density range, 16.5 du/ac to 18 du/ac). At 16.5 du/ac, 40 dwelling units must be established on the 2.4-acre project site (e.g., 16.5 du/ac X 2.4 ac = 39.6 du, rounded up to 40 du). The proposed project is consistent with this land use designation, as well as goals, policies and objectives of the General Plan discussed below.

Housing Goals

Goal H2: The proposed project is compatible with this residential goal: “High quality and well-designed new housing of all types throughout the city”. The site’s redevelopment with new townhouses provides additional ownership housing in the Niles area. The proposed project, including project density (16.5 du/ac), building form, height (two stories or 31’), design and scale, are appropriate and compatible with the surrounding residential character of the neighborhood.

Land Use Goals

Land Use Goal 1.9: The proposed project is compatible with this land use goal which states, “To achieve a variety of housing types, the City has designated locations where moderate and higher density development is appropriate. Criteria for the location of higher density housing include access to transit, proximity to commercial areas, and proximity to a collector or arterial street”. The proposed project site is directly adjacent to a AC Transit bus stop (Routes 332, 625 and 216) on an arterial street, Niles Boulevard, and about 2.5 miles from both the Fremont and Union City BART stations. The project site is also just over one-half mile from the 7-block long commercial main street and future planned town plaza at the heart of Niles, where a variety of retail and service uses exist.

Land Use Policy LU 1.12: The proposed project is compatible with this land use policy which states, “To the maximum extent feasible, play areas and open spaces shall be located to avoid conflict between residents attempting to reach these facilities and vehicular traffic”. The project is designed to incorporate a front yard patio for each unit. A common open space area, which includes a patio table, benches, and children’s play structures, is proposed in a location away from the public streets with access via the central paseo/walkway system. This design reduces conflict with vehicular traffic that would occur within the private street area.

In its review of the project, staff finds the proposed project is consistent with the existing General Plan land use designation and Housing and Land Use, Goals and Policies.

Proposed Zoning Conformance: The proposed project site is Planned District, P-2004-81. Development on the project site is required to adhere the Planned District’s regulations. A multi-family residential use is a permitted use on the site, as well as most uses permitted in the Neighborhood Commercial District. In addition, mixed-use (i.e., commercial and residential) is also permitted. Residential uses are allowed at a density of 15-18 dwelling units per acre. The Planned District provides that the development of a multi-family residential project is required to comply with the R-3 Multi-family Residence District standards. All new residential projects greater than 11 units must receive Site Plan and Architectural Approval (SPAA) by the Planning Commission. The table below represents lot and siting requirements, which, as permitted by the Planned District, can be modified through the SPPA process.

R-3 Multi-family Residence Building and Site Standards	
Maximum Building Height	52 feet *
Minimum Lot Size	6,000 square feet
Minimum Lot Width	60 feet
Street Frontage	35 feet
Front and Street Side Setback	20 feet
Interior Side and Rear Setbacks	10 feet
Lot Coverage	50 percent
Minimum Common Open Space Area	500 SF for up to 5 units, plus 50 SF for each additional unit; one dimension at least 15 feet
Minimum Private Open Space Area	Balconies: Min. 60 SF, least interior dimension of 6 feet. Patio: Min. 100 SF, least interior dimension of 10 feet.

*The Planned District encourages that future residential development (e.g., building height) to reflect the scale and mass of the existing single-family development on the opposite side of Rock Ave.

Building Height: The building structures proposed are approximately 31 feet in height, which is well within the allowable building height of 52 feet, as the project site is not within 50 feet of properties designated for Low Density Residential use (ten units per acre or less). The Planned District encourages that the proposed residential scale and massing of buildings facing Rock Avenue reflect that of the existing single-family development on the opposite side of the road. Staff believes that the proposed two-story building height design (31') applied to all structures in the development is consistent with this intent.

Building Setbacks/Coverage: The front and side street setbacks of the proposed buildings are less than the general standard of 20 feet. To promote a more pedestrian-oriented environment and neighborhood setting with front doors oriented towards the streets, the applicant proposes front and side street setbacks ranging from 15 feet to 22 feet. Staff believes that the reduced setbacks are suitable for type of development proposed.

Private and Common Open Space: Each dwelling unit is provided with a private patio that exceeds the minimum 100 SF area and 10-foot interior dimension specified in the table. The proposed common open space area is sufficient in size and contains appropriate amenities (e.g. tables, benches, play structures, etc.) for the future occupants of the development. Based on the proposed number of units (40), a minimum common open space area of 2,250 SF is required, while approximately 3,300SF of open space is proposed. Staff finds that the project meets these requirements.

Parking: The City of Fremont parking standards require 1 covered parking space for each two or more bedroom unit for resident parking, plus 0.5 uncovered spaces per unit for residents, plus 0.5 uncovered spaces per unit designated for guest parking only. Because 40 dwelling units with 3 bedrooms are proposed, the total off-street parking requirement for this project is 80 parking spaces: 60 spaces for occupant parking and 20 spaces for guest parking. Based on the number of proposed parking spaces (100), the project exceeds the minimum off-street parking requirement for residents by 20 spaces.

The proposed site plan shows a total of 100 parking spaces:

Covered Occupant Parking (garages): 80 side-by-side spaces

Uncovered Guest Parking: 20 standard spaces (1 van accessible)

100 spaces

Staff is aware of the existing on-street parking congestion in the neighborhood that is largely caused by the neighboring Wat Buddhansorn Thai Temple religious facility and Casa Arroyo apartment development. Staff is also aware that the Temple occasionally uses the existing parking lot serving the shopping center on the project site as an interim solution to accommodate overflow parking. The Temple acknowledges that additional parking may be necessary for its onsite activities and informed staff that plans are being developed to create a new parking facility on the adjoining 1-acre parcel (36038 Niles Blvd.) it recently purchased. Staff will continue to encourage and assist the Temple on its planned expansion of a new parking facility. If the expansion proceeds forward, the Planning Commission will be considering an amendment to the Temple's existing Conditional Use Permit (U-88-4).

The applicant was also encouraged to provide more parking than the minimum requirement. Staff believes that the 100 spaces proposed is sufficient. Conditions are proposed which require that all parking spaces proposed be available (free from household storage) for occupants and guests (Condition B-3).

Inclusionary Zoning: The project is required to meet the City's Inclusionary zoning requirements through the inclusion of at least 15 percent of all residential units as Below Market Rate (BMR) units. A total of 6 BMR units are required, as conditioned, for the 40-unit project (Condition A-5).

Planned District Findings: Four specific Planned District findings must be made when considering the architecture and site design in relation to the surrounding area. A proposed project must also take into account site access and impacts on adjacent residential and commercial uses. As mentioned below, staff believes that the proposed project meets the special goals of the Planned District, and proposes the following findings:

1. With the implementation project refinements mentioned under "Design Analysis", the proposed architecture will be superior quality and will enhance the scenic qualities and complement the character of the area and be an attractive feature for Fremont and the Niles Planning Area.
2. The proposed site plan has provided for appropriate pedestrian connections to nearby feature via the central paseo, private walkway system and individual walkways from unit porches directly connecting to the public sidewalks.
3. The proposed driveways and guest parking spaces are located, to the degree feasible, away from the corner of Niles Boulevard and Rock Avenue.
4. The proposed access is designed so as to minimize impacts to adjacent thoroughfares.

DESIGN ANALYSIS:

Architecture: The applicant describes that design of the project utilizes different materials, colors and landscaping, to provide visual interest. Building claddings consist of siding material, shingles and stucco. The Craftsman/Farmhouse design, quality and scale of the project are generally consistent with the single- and multi-family neighborhood setting. In particular, the proposed building height of two-stories for all structures is less than 31 feet in height, appropriate with the height of neighboring single-family homes on Rock Avenue and 394-unit Casa Arroyo Apartment development to the south. In addition, the proposed unit sizes, ranging from 1,304 SF to 1,374 SF, are smaller than typically proposed in recent townhouse projects. The main façade treatment consists of stucco painted in dark and light brown colors and siding in a medium brown color. All doors are treated in solid darker brown color, while the window trim in an off-white eggshell color. A second color scheme is proposed using complimentary colors (Informational 1). The front façades of the buildings incorporate covered front porches with a pair of columns. The profile of the roof is a combination of gables sheathed with composition shingles. The design of the buildings also incorporate wood shutters at windows; outlookers at gables; wood flower boxes; and a brick or ledge stone wainscot at the buildings' base. Standard garage doors are proposed.

Staff believes that some refinements, which include refining architectural details to further enhance the design of the project, should be considered. Staff recommends that these refinements be resolved during the Development Organization review process (Condition D-8). The recommendations are listed below.

1. Require the applicant to work with staff during the Development Organization review process on the final selection of the roofing material (Condition D-1).
2. Staff recommends that exposed rafters be added to the building eaves(Condition D-2).
3. The covered roof proposed for the porch of unit 15 within the six-plex building at the corner of the project site should be modified to wrap around to the left (Niles Bl.) side of the building (Condition D-3).
4. Screening elements should be provided for all air conditions units in the front patios (Condition D-4).
5. The front door entrances for units 15, 20, 34 and 40 should be redesigned to be oriented towards Niles Boulevard (Condition D-5).
6. Higher quality garage doors should be proposed, replacing the standard steel doors shown(Condition D-6).

With the implementation of these refinements and any recommendations included by the Planning Commission, staff believes the project architecture will be consistent with the Planned District's goals and standards.

Site Planning: The applicant will be required to install new street improvements, replacing the existing street improvements that were previously partially installed.

The proposed site design is in a traditional townhouse-style layout with living areas behind and above garages. Access to the enclosed garages would be from new private streets with two points of access from the neighboring public streets. A total of 40 units in eight main structures are proposed, each containing 4, 5 or 6 living units. The structures are two stories in height (31') with two-level living units over enclosed parking. The proposed structures are designed to be

oriented towards the street with front doors facing the street; front porches used to reflect the rhythm of a single-family residential area (particularly to the west); and, parking generally screened by landscaping and locations at the rear (away from the public streets and corner of the site) to avoid the unsightly appearance of garage door facades and uncovered guest parking. New street improvements, replacing the existing street improvements that were previously installed will also be required.

Staff supports the proposed site design and finds that it is compatible with the surrounding development. However some minor modifications are recommended below.

1. The special paving at the private street intersections should be realigned (or enlarged) to properly connect to all walkway ramps (Condition C-1).
2. The paseo and private street terminuses should be enhanced while not impacting the proposed bioswales (e.g., seat benches, planter pots, radial low walls, landscape structural elements/artwork, color planting material, etc.) (Condition C-2).
3. Special paving should also be proposed within the paseo and walkways directly connecting to front porches of units (Condition C-3).

Landscaping: The existing site contains some trees which generally consist of Evergreen Pears in the parking lot area. All existing trees on the site are proposed for removal. Appropriate landscaping including a variety of shrubs and groundcover, and trees in the location of the parking area, paseo and common open space areas are proposed. Foundation planting is also provided around the main structures. In addition, new street trees will be installed on the project frontage on Rock Avenue and Niles Boulevard (Condition E-2).

Lighting/Fencing: Although the applicant has not submitted a conceptual lighting plan, staff believes that an appropriate lighting plan for the development could be developed during the Development Organization review process. A lighting plan for shared open spaces and the private streets that provides light from a variety of sources (e.g. pedestrian-scale bollard pathway lighting, appropriately-scaled street light standards) is recommended (Condition E-3).

The applicant proposes to retain the existing pre-cast slump-stone wall installed by the Casa Arroyo Apartment developer. According to City records, this wall appears to be on the property line to serve as a shared wall. However, the westerly section of the wall is in fair condition and southerly portion in poor condition. The wall should be repaired and sections should be replaced. In particular, the section of the wall on the southerly property line is leaning and breaking up due to the impact of mature Oak trees on the Casa Arroyo property. Staff recommends that a condition be included to require the applicant to work with the Casa Arroyo property owners to repair the existing wall to good condition and/or replace the wall with a new pre-cast wall. In addition, where the wall impacts existing trees on the adjoining parcel (Casa Arroyo Apartment parcel), the wall should be jogged to provide appropriate setbacks, or alternative means should be implemented, to further prevent impact on, or damage to, the trees (Condition C-10).

Circulation/Access Analysis: Pedestrian and vehicle access to the project site is from the existing public streets, Niles Boulevard and Rock Avenue. For both public streets, partial street improvements were installed in 1976, when the existing commercial building was constructed. New sidewalk will be installed along the entire project frontage. On-site pedestrian facilities are provided by concrete paths to each townhouse front door and along the guest parking area.

On-site vehicle circulation is provided by a private vehicle access way (PVAW), which is a type of private street used for condominium and townhouse developments. Due to the design of the project and size/shape of the project, the following PVAW design standards are not being met with this project:

- PVAW Policy #15: A walkway connection is to be provided from the private vehicle access ways to the main pedestrian pathway system. A 3.5 foot sidewalk shall be provided on both sides of the private vehicle access way.

Analysis: The size of the project site and the design of the units restrict the amount of available area for pedestrian facilities. All of the units are designed to have vehicles entering the garages from one side and pedestrians entering the front door from another side of the townhouses. Because of the building design, pedestrian pathways are provided from the front doors to either the public sidewalk or to the on-site pathway system.

Several recent townhouse and condominium projects have been approved without sidewalk on both sides of the private vehicle access way, because the front door of the units are not located on the same side of the building as the garage door. In this project, pedestrian connections are provided to each unit. The applicant is requesting deviation from the policy requiring sidewalks along the private vehicle access ways as part of the Site Plan and Architectural Review application. Staff supports the proposed design.

Street Improvements: The project site is located on the southeast corner of the Niles Boulevard and Rock Avenue. Niles Boulevard is classified as a four-lane arterial in the General Plan. Rock Avenue is a collector street. A portion of the project street frontage was improved with the development of the existing commercial building and associated parking lot. In accordance with the Subdivision Ordinance, the proposed subdivision is required to dedicate street right-of-way and install complete street improvements.

Niles Boulevard: The planned right-of-way for Niles Boulevard is for a four-lane arterial, with a pavement width of 84 feet. However, as one gets closer to historic commercial district, Niles Boulevard transitions to a narrower two-lane arterial. The project site is located at the beginning of the transition to a narrower right-of-way. The required right-of-way dedication width, of up to five feet, is shown on the tentative map. The required street improvements on Niles Boulevard include, but are not limited to: removal of the existing sidewalk; install new five-foot wide sidewalk; construct a private street driveway; replace existing damaged and/or displaced curb, gutter, and pavement to the centerline of Niles Boulevard; and install a concrete bus pad at the existing bus stop.

Rock Avenue: The planned right-of-way for Rock Avenue is sixty feet, with a pavement width of forty feet. At the southern end of the project, the Rock Avenue right-of-way width increases, due to an existing median with trees in the middle of the street. The right-of-way for Rock Avenue was previously established, as a roadway and public utility easement, in the mid-sixties with the development of a nearby subdivision. The existing right-of-way exceeds what is required for a residential collector street; therefore, in order to accommodate the project, the applicant has requested the City vacate the excess right-of-way along Rock Avenue. The easement vacation is scheduled for City Council on December 6, 2005.

Required street improvements for Rock Avenue include, but are not limited to: removal of the existing sidewalk; installation of a new five-foot wide sidewalk; construction of a private street driveway; and replacement of existing damaged and/or displaced curb, gutter, and pavement to the centerline of Rock Avenue.

Private Vehicle Access Ways: The on-site streets shall be privately owned and maintained by the homeowners association. Public utility easements and an emergency vehicle access easement shall be established over the private streets. Except for right-of-way and pavement widths, the on-site streets and underground utilities shall be constructed to meet or exceed public standards.

Public Service Easement: The developer shall dedicate a public service easement along the project public street frontage. The easement shall be a minimum six feet wide, except for a small portion at the southwest corner, which shall be reduced to five feet wide to accommodate the proposed building architecture. The easement will be dedicated on the final map for the subdivision.

Grading/Topography: The project site is predominantly flat and half the site is developed with a commercial building and associated parking lot. Two areas within the project site are undeveloped, but for a tree and a concrete manhole cone (debris) at the northwestern corner. On-site grading for the project is limited to the grading needed for the building pads, streets, and landscaped areas, including the bio-swales for treatment of storm water runoff. The project civil engineer estimates total grading to be a balanced 3,000 cubic yards (1,500 cubic yards each of cut and fill). Because the estimated grading quantities exceed 1,000 cubic yards, a preliminary grading plan application has been submitted with the tentative map application.

Urban Runoff Clean Water Program: The Federal Clean Water Act of 1972 and Water Quality Act (1987) require localities throughout the nation to obtain a National Pollutant Discharge Elimination System permit (NPDES) in order to discharge storm water into public waterways such as creeks, rivers, channels and bays. The latest Alameda Countywide permit requires projects to meet quantitative performance goals for reducing pollutants in storm water runoff.

The project proposes to meet the permit requirements by: constructing bio-filtration planters adjacent to the guest parking; constructing a bio-swale along the Niles Boulevard frontage; and by installing an underground storm water treatment vault in the PVAW. The proposed treatment measures will be reviewed for compliance, along with the site drainage plans, during the final map and subdivision improvement plan process.

ENVIRONMENTAL ANALYSIS: A Mitigated Negative Declaration was previously adopted for this project. The environmental analysis identified concerns regarding potential impacts to cultural resources, hydrology/water quality, noise, air quality, and geology/soils. The approved Mitigated Negative Declaration included mitigation measures, which, if implemented, would reduce the identified impacts to non-significant levels. These mitigation measures are included as conditions of approval for the project (Informational 3).

APPLICABLE FEES:

Development Impact Fees: The project is subject to Citywide Development Impact Fees. These fees include fire protection, capital facilities, traffic impact, park facilities and park dedication in-lieu fees. These fees shall be calculated at the fee rates in effect at the time of building permit issuance (Condition F-1). At that time, the City's Impact Fee Administrator will consider an impact fee credit for the existing 5,600 SF retail center.

ENCLOSURES:

Exhibit "A"	Project Site, Architectural, Roof, Conceptual Landscape and Drainage Plans
Exhibit "B"	Vesting Tentative Tract Map 7647
Exhibit "C"	Preliminary Grading Plan and Private Street
Informational 1	Applicant's Design Statement
Informational 2	Approved Mitigated Negative Declaration
Informational 3	Color Elevations
Informational 4	Public correspondence

PROJECT EXHIBITS:

Exhibit "A"	Project Site, Architectural, Roof, Conceptual Landscape and Drainage Plans
Exhibit "B"	Vesting Tentative Tract Map 7647
Exhibit "C"	Preliminary Grading Plan and Private Street

PROPOSED PROJECT CONDITION EXHIBITS:

Exhibit 1	Findings and Conditions for Site Plan and Architectural Approval—General Project Conditions
Exhibit 2	Findings and Conditions for Vesting Tentative Tract Map 7647
Exhibit 3	Findings and Conditions for Preliminary Grading Plan and Private Street

SUPPLEMENTAL HEARING MATERIAL:

Informational 5	Color and Material Board
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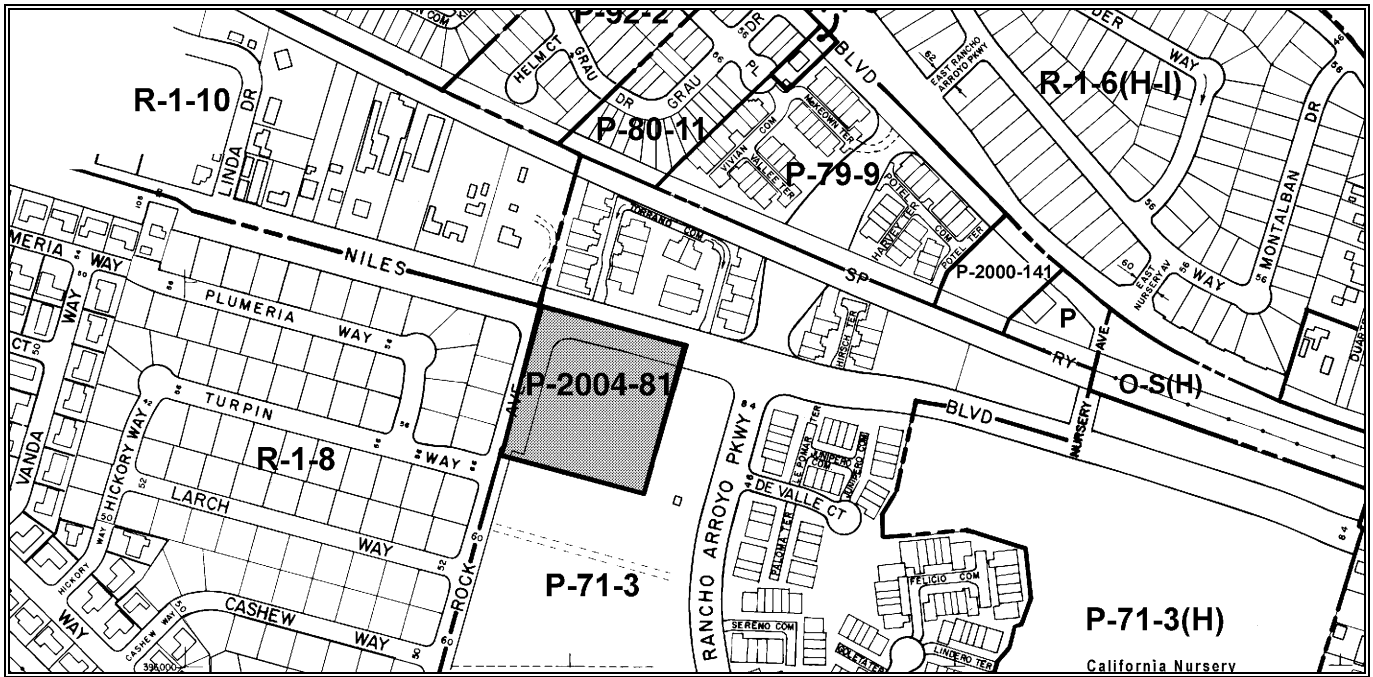
Recommended Actions:

1. Hold public hearing.
2. Find that the previously adopted Mitigated Negative Declaration and Mitigated Monitoring Program for the project are still valid and that there is no substantial evidence that the project, as mitigated, will have a significant effect on the environment and further finding that this action reflects the independent judgment of the City of Fremont.
3. Find that the proposed project is in conformance with the relevant provisions contained in the City's General Plan. These provisions include the designations, goals and policies set forth in the General Plan as enumerated within the staff report and Finding Exhibits adopted/recommended herewith.
4. Find that the proposed project as shown in Exhibit "A" is in conformance with the standards and policies of Planned District P-2004-81, and that based on the Site Plan and Architectural Approval process conducted, the

exceptions granted to the general front and side street setback standards of the district and 3.5 foot sidewalk private vehicular access policy (PVAW) are warranted for the reasons mentioned in the staff report.

5. Find Vesting Tentative Tract Map 7647 shown on Exhibit "B", Preliminary Grading Plan shown and Private Street shown on Exhibit "C" to be in conformance with the relevant provisions contained in the City's General Plan and standards of the Fremont Municipal Code.
6. Approve Exhibit "A" (Finding, Site Plan and Architectural Approval), based on findings and conditions in Exhibit "1".
7. Approve Exhibit "B" (Tentative Tract Map 7647), based on findings and conditions in Exhibit "2".
8. Approve Exhibit "C" (Preliminary Grading Plan and Private Street), based on findings and conditions in Exhibit "3".

Existing Zoning
Shaded Area represents the Project Site



Existing General Plan



Exhibit "1"
PLN2006-00002
(Finding, Site Plan and Architectural Approval)
Rock & Niles Townhomes, 36153 Niles Boulevard
(APN 507-0062-003-09, Abraham; and, 507-0062-004-13, Sinodinos)
Planning Commission Hearing on December 8, 2005

FINDINGS:

The findings below are made on the basis of information presented at the public hearing and contained in the staff report to the Planning Commission dated December 8, 2005, incorporated hereby.

General Findings

1. Find that the previously adopted Mitigated Negative Declaration and Mitigated Monitoring Program for the project are still valid and that there is no substantial evidence that the project, as mitigated, will have a significant effect on the environment and further finding that this action reflects the independent judgment of the City of Fremont.
2. Find that the proposed project is in conformance with the relevant provisions contained in the City's General Plan. These provisions include the designations, goals and policies set forth in the General Plan's Housing and Land Use Chapters as enumerated within the staff report.
3. Find that the proposed project is in conformance with the standards and policies of the R-3 zoning district, as governed by Planned District P-2004-81, and that based on the Site Plan and Architectural Approval process conducted, the exceptions granted to the general front and side street setback standards of the district and 3.5 foot sidewalk private vehicular access policy (PVAW) are warranted for the reasons mentioned in the staff report.

Planned District Special Findings

4. Find that, through the implementation project refinements, the proposed architecture will be superior quality and will enhance the scenic qualities and complement the character of the area and be an attractive feature for Fremont and the Niles Planning Area.
5. Find that the proposed site plan has provided for appropriate pedestrian connections to nearby feature via the central paseo, private walkway system and individual walkways from unit porches directly connecting to the public sidewalks.
6. Find that the proposed driveways and guest parking spaces are located, to the degree feasible, away from the corner of Niles Boulevard and Rock Avenue.
7. Find that the proposed access is designed so as to minimize impacts to adjacent thoroughfares.

General Conditions (Must be satisfied on an on-going basis—Pre-, during-, and post-construction.)

- A-1 The project shall conform with Exhibit "A" (Project Site, Architectural, Roof, Conceptual Landscape and Drainage Plans) and all conditions of approval set forth herein.
- A-2 The proposed project shall also comply with all companion conditions of approval relating to the Vesting Tentative Tract Map (Exhibit 2), Preliminary Grading Plan and Private Street (Exhibit 3). All plans shall be designed to be in compliance with applicable federal, state and local building and fire code requirements.
- A-3 Plans shall be submitted to the Development Organization (D.O.) for review and approval to insure conformance with these conditions herein, as well as with relevant codes, policies, and other requirements of the Fremont Municipal Code.

- A-4 Minor modifications to the approved building designs and siting, elevations and colors may be made, subject to review and approval of the Planning Director or his/her designee if such modifications are in keeping with the architectural statement of the original approval. However, the Planning Director shall retain the authority to determine the level of review required (i.e., depending on the severity of the modification, the project may be referred to the Planning Commission for review and approval).
- A-5 Pursuant to Article 21.7 [Inclusionary Housing] of the Fremont Municipal Code, the Property Owner(s) shall enter into a BMR Master Developer Agreement with the City to provide at least 15% of total number of residential units made available at affordable housing costs within the for-sale development.

A total of 6 units in the 40-unit "Rock & Niles Townhomes" project shall be available for participation in a below market rate (BMR) affordable housing program, subject to the review and approval of the Office of Housing and Redevelopment. The BMR Master Developer Agreement shall run with the land, made part of the project's conditions of approval and shall be recorded on the property titles of each parcel designated for the BMR sales program.

The BMR Master Developer Agreement shall include the following provisions:

- BMR units must be affordable to families earning no greater than 110% or below of the county median income as defined by the United States Department of Housing and Urban Development in effect at the time of sale;
- Units shall only be available to eligible first time homebuyers as defined under the California Housing Finance Agency To the extent permitted by law, preference shall be given to those who currently live, work, or previously lived in the City of Fremont;
- To insure long-term affordability, and to assist the greatest number of families over the longest feasible time, BMR units shall be subject to resale restrictions under individual agreements developed by the City of Fremont, which shall be binding for a minimum of 30 years, renewable upon resale;
- The BMR sales price shall be computed as follows:

For a two bedroom unit, the sales price shall be computed based upon the maximum program restricted income for a family of three times a multiplier of 3.5, and for a three bedroom unit, the sales price shall be computed based upon the maximum program restricted income for a family of four times a multiplier of 3.5. For January 2005, the sales prices are:

2005 BMR sales price:

2 bedrooms (family of 3 at 110% of area median income): \$284,900

3 bedrooms (family of 4 at 110% of area median income): \$316,400

4 bedrooms (family of 5 at 110% of area median income): \$341,950

The City of Fremont Office of Housing and Redevelopment will conduct the Buyer Selection process and will provide eligible homebuyers to the Developer. The selection process will be described in the BMR Master Developer Agreement.

- A-6 The mitigations measures below shall be implemented at pre-, during-, and/or post-construction intervals, as listed below.

Mitigation #1: *Future construction on the site shall comply with dust suppression measures. Dust generated on the project site shall be controlled by watering all exposed areas at least twice daily during excavation, and especially during clearing and grading operations. Additional watering on windy or hot days is required to reduce dust emissions. Cover stockpiles of sand, soil and similar materials with a tarp. Cover trucks hauling dirt or debris to avoid spillage. In areas where construction is delayed for an extended period of time, the ground shall be re-vegetated to minimize the generation of dust. A contact person shall be designated to oversee the implementation of dust control. In terms of demolition activities, the applicant and/or owner shall be required to receive the appropriate approvals from all regulatory agencies, including a "J" number from the Bay Area Air*

Quality Management District (BAAQMD). ***This mitigation shall be implemented during- and post-construction.***

Mitigation #2: Should any human remains or historical or unique archeological resources be discovered during site development work, the provisions of CEQA Guidelines, Section 15064.5.(e) and (f) shall be followed to reduce impacts to a non-significant level. ***This mitigation shall be implemented during construction.***

Mitigation #3: Prior to any future residential uses on the site, a Phase I Environmental Assessment shall be performed by a licensed professional to identify historic sources of soil or groundwater contamination. If recommended by the Phase I analysis, a Phase II analysis shall be performed and all recommendation of the Phase II analysis shall be implemented. Recommendations regarding further contamination characterization, and clean up work shall be completed and a closure letter issued by the appropriate authority prior to any residential construction on the site. ***This mitigation shall be implemented pre-construction.***

Mitigation #5: Prior to any demolition, renovation or removal of structures on the project site:

- a. An asbestos survey of existing structures shall be performed consistent with National Emissions Standards for Hazardous Air Pollution guidelines. If warranted, a remediation plan to remove asbestos shall be prepared and implemented. Said plan shall be consistent with applicable Fremont Fire Department standards, Bay Area Air Quality Management District requirements and Cal-OSHA standards. Necessary permits shall be obtained from all applicable regulatory agencies.
- b. A lead based paint survey shall be conducted. If lead-based paint is encountered, the requirements as outlined in Cal-OSHA Lead in Construction Standard, Title 8, CCR Section 1532.1 (or succeeding regulation) shall be followed.

This mitigation shall be implemented pre-construction/demolition.

Mitigation #6: An acoustic analysis shall be prepared for all future development projects that include a residential component to determine whether any part of the residential area lies inside a 60 dba exterior noise exposure contour. If so, the acoustic report shall identify specific measures to reduce outdoor use areas to the City of Fremont noise standard, including, but not limited to, placement of noise barriers and using buildings to buffer noise. The analysis shall also ensure that the City and State interior noise level for future residential structures do not exceed 45 dba. Recommendation made in the acoustical analyses shall be incorporated into the project design. ***This mitigation shall be implemented pre-construction.***

Special Conditions (Must be satisfied on on-going basis and included in the Homeowner's Covenants, Conditions and Restrictions (CC&Rs))

- B-1 A Homeowner's Association shall be formed and shall covenant and be responsible for the maintenance of all commonly owned facilities, including the private street (or private vehicular accessway), which are not maintained by the public utility agency. CC&Rs, including these imposed conditions, shall be submitted to the Development Organization (or during the tract map improvement plan review process) for review and approval.
- B-2 The Homeowner's Association shall be required to contract with a professional management firm to handle maintenance operations and waste/recycling collection procedures. Documentation of such contract shall be submitted to the City. All commonly owned facilities shall be well-maintained in a good condition.
- B-3 The exterior parking of boats, campers, and trailers on the site are prohibited. In no event shall household storage preclude the parking of vehicles in a garage area, and all parking spaces designated for guest parking shall be restricted for guest usage only.
- B-4 In the interest of aesthetics, uniformity in appearance, safety and security, all garage doors shall be maintained in a closed position, except during entering or exiting movements from the garage.

- B-5 The Homeowner's Association shall be responsible for the maintenance of all common areas. Landscaping shall be designed with an efficient irrigation system to reduce runoff and promote surface filtration and to minimize the use of fertilizers, herbicides, and pesticides which can contribute to urban runoff pollution.
- B-6 No power equipment, hobby shops, car maintenance (other than emergency work) shall be permitted within the private garage areas where such activities would displace normal use of the garages for day to day parking purposes.
- B-7 The Homeowner's Association is to periodically provide educational materials on stormwater pollution prevention (as furnished by the City) to all occupants.
- B-8 The Homeowner's Association shall be responsible for litter control and sweeping of all paved surfaces of the private street and within the development. All private storm drain systems are to be cleaned immediately before the commencement of the rainy season (October 15).
- B-9 No exterior additions to the residential structures, including the addition of pre-manufactured sun rooms and patio covers, shall be permitted.
- B-10 All roof-mounted and other mechanical equipment shall be screened from view from adjacent public rights-of-way and internal private streets.
- B-11 Garbage, trash or recycling containers shall be suitably concealed in an area dedicated within the garage of each unit, except such features may be placed at curbside on the designated garbage pick-up day.
- B-12 A provision shall be included in the CC&Rs stating that the payment of the utility (e.g., water, energy) bills for all common facilities, including its maintenance, are the obligations of the Homeowners Association.
- B-13 All other CC&R special conditions/provisions included as companion conditions within Exhibits 2 and 3.

Prior to Issuance of Building Permits (Required modifications to project design.)

Site Planning Modifications

- C-1 The special paving at the private street intersections shall be realigned (or enlarged) to properly connect to all walkway ramps. All proposed raised and enhanced pedestrian walkways and paseos shall be appropriately aligned and located so as to create a network of uninterrupted connections. The proposed enhanced connections within the private street shall be modified to meet this condition.
- C-2 The paseo and private street terminuses shall be enhanced while not impacting the proposed bioswales (e.g., seat benches, planter pots, radial low walls, landscape structural elements/artwork, color planting material, etc.).
- C-3 Special paving shall also be proposed within the paseo and walkways directly connecting to front porches of units.
- C-4 The construction drawings shall be reviewed by the acoustic consultant to ensure that all of the mitigation measures required are incorporated in the project. A letter from the acoustic consultant to staff shall state that the plan is in compliance with the requirements for noise mitigation under Condition D-8, and shall be subject to staff review and approval during the Development Organization review process.
- C-5 Utility lines shall be located so as not to prohibit the placement of landscaping in between garage units.
- C-6 All utility and fire appurtenances, meters and risers shall be concealed or screened from view by materials of a design and composition compatible with the architectural treatment of the project. The proposed utility closets shall be sufficient in size to accommodate the necessary utilities.
- C-7 The applicant shall provide automatic fire extinguishing systems for each residence within the development, subject to the review and approval of the Development Organization review process.

- C-8 The applicant shall work with PG&E on the locations of all underground transformer vaults. To the degree feasible, transformer vaults should be located in inconspicuous areas on the project site.
- C-9 The applicant shall work with the Casa Arroyo property owners to repair the existing wall to good condition and/or replace the wall with a new pre-cast wall. In addition, where the wall impacts trees, the wall shall be jogged to provide appropriate setbacks, or alternative means shall be implemented, to further prevent impact on the trees and the wall.
- C-10 All recommendations included in the Phase I Environmental Assessment (December 2004) prepared by Engeo, Inc., shall be completed (i.e., evaluation of building for asbestos containing materials (ACMs) and lead-based paints; and, evaluation of PG&E pad-mounted transformer for PCB material prior to demolition).
- C-11 Compliance with all conditions listed above under "General Conditions" relating to 'pre-construction' mitigation measures (e.g., noise attenuation, stormwater treatment).

Building Design Modifications

- D-1 The applicant shall work with staff during the Development Organization review process on the final selection of the roofing material.
- D-2 Exposed roof rafters shall be added to the buildings' eaves.
- D-3 The covered roof proposed for the porch of unit 15 within the six-plex building at the corner of the project site shall be modified to wrap around to the left (Niles Bl.) side of the building.
- D-4 Screening elements should be provided for all air conditions units in the front patios.
- D-5 The front door entrances to units 15, 20, 34 and 40 shall be redesigned to be oriented towards Niles Boulevard.
- D-6 Higher quality garage doors shall be proposed, replacing the standard steel doors shown.
- D-7 All units shall be pre-wired with exterior junction boxes to provide satellite dish cable connections. In addition, all bedrooms, including the living room, shall be pre-wired with phone and cable connections. No external wiring of these utilities shall be permitted.
- D-8 All recommendation for the exterior window/wall components to meet the structures' interior noise standard Day-Night Average Sound Level (DNL) of 45 decibels (dB), included in the Noise Study 05-0338 (September 2005) prepared by Charles M. Salter, Inc., shall be completed.
- D-9 Additional detailing and design changes may be required if found appropriate during staff's Development Organization review of the construction drawings.

Landscaping/Lighting Plan Modifications

- E-1 The final landscape plan shall be subject to the review and approval of the City's Landscape Architect during the Development Organization review process.
- E-2 The applicant shall be required to install new street trees, subject to the review and approval of the City's Landscape Architect.
- E-3 A landscape plan shall be submitted to the Development Organization for review and approval, indicating full details regarding (1) paving materials and textures of walkways, (2) lighting of walkways and driveways with low intensity non-glare type fixtures, (3) screening of driveways and parking areas, and (4) landscaping of site and

parkway areas. As part of the landscape plan, for the park, railroad buffer, promenade and front yards, the applicant shall submit to the Development Organization:

- a. An underground irrigation plan.
 - b. Weed control specifications.
 - c. A lighting plan for the illumination of the building, driveways and parking areas. Type of lighting fixtures, their heights, intensity and direction shall be clearly indicated. A lighting plan for shared open spaces and the private street that provides light from a variety of sources (e.g. pedestrian-scale bollard pathway lighting, appropriately-scaled street light standards) shall be proposed. The lighting plan shall be reviewed to match the lighting intensity and quality to the use for which it is intended, i.e., lighting proposed for the pedestrian paseo will be substantially different from the required lighting of the private street. Lighting which shines directly into dwelling units or adjacent property, or is overly intense and bright, shall be avoided.
 - d. Construction details of raised planters, walkways, paths, benches, walls, fences, trellises, and other architectural features as appropriate.
 - e. Landscape and irrigation plans for the front yards of the single-family detached residences.
- E-4 The plant palette shall reflect and reinforce the selected architectural style of the buildings. A more detailed landscape plan shall be submitted with the Tract Map Improvement Plans.

Payment of City Fees

- F-1 The project shall be subject to all City-wide development impact fees. These fees may include, but are not limited to, park dedication in-lieu fee, fees for fire protection, park facilities, capital facilities and traffic impact. The fees shall be calculated at the fee rate in effect at the time of building permit issuance. A impact fee credit for the existing 5,600 SF shopping center will be provided.

During Construction Conditions (Conditions that must be satisfied during construction.)

- G-1 A professional engineer, registered in the State of California, shall be retained to prepare the final grading plan. Upon completion of the grading, a letter shall be submitted to the Development Organization that the as-built grading is in compliance with the approved grading plan.
- G-2 Prior to the inspection of the roof sheathing, the project manager or supervising general contractor shall contact the Development Organization at (510) 494-4561 for an interim inspection by Planning Division staff of the structure to ensure that the construction is consistent with the approved architecture and building design.
- G-3 Construction hours will be limited in accordance with Section 8-2205 of the Fremont Municipal Code, and notes to this effect shall be placed on the cover sheet of the construction plans and on an all-weather notice board (format and content specified by City) conspicuously placed adjacent to the most visible right of way for the duration of the construction activity as follows:
- a. Monday-Friday, 7 a.m. to 7 p.m.
 - b. Saturday & Holiday, 9 a.m. to 6 p.m.
 - c. Sunday, no construction activity allowed
- G-4 Compliance with all conditions listed above under "General Conditions" relating to during construction' mitigation measures.

Final Occupancy Conditions (Must be satisfied prior to occupancy.)

- H-1 A professional engineer registered in the State of California shall be retained to prepare a final grading plan, and upon the completion of the grading submit to the Development Organization a statement that the as-built grading conditions do not deviate from the approved plan by more than one foot of vertical elevation, subject to the review and approval of staff prior to the issuance of occupancy permits for each structure.
- H-2 The project architect shall submit a letter to the City certifying that the buildings have been constructed in conformance with the approved architectural plans, subject to the review and approval of the Development Organization.
- H-3 The project landscape architect shall submit a letter to the City certifying that the on-site and streetscape (ROW) landscaping have been constructed in conformance with the approved landscape and irrigation plan, subject to the review and approval of the Development Organization.
- H-4 Compliance with all conditions listed above under "General Conditions" relating to 'post-construction' mitigation measures (e.g., erosion control).

Exhibit "2"
PLN2006-00002
(Vesting Tentative Tract Map)
Rock & Niles Townhomes, 36153 Niles Boulevard
(APN 507-0062-003-09, Abraham; and, 507-0062-004-13, Sinodinos)
Planning Commission Hearing on December 8, 2005

FINDINGS:

The findings below are made on the basis of information presented at the public hearing and contained in the staff report to the Planning Commission dated December 8, 2005, incorporated herein by reference.

- A. The proposed map satisfies the requirements and conditions imposed by the Subdivision Map Act and the City of Fremont Subdivision Ordinance, because the procedural requirements of the Map Act are being followed and the proposed lots conform to the standards of Planned District, P-2004-81.
- B. The proposed subdivision, together with the provisions of its design and improvement, is consistent with the General Plan land use designation of Medium Density Residential (15-18 du/ac) for the site.
- C. The site is physically suitable for the type and proposed density of the development, because it is consistent with the General Plan and zoning designations for the site.
- D. The design of the subdivision and the proposed improvements are not likely to cause substantial environmental damage or substantially and avoidably injure fish or wildlife or their habitat, because of the design and location (infill) of the development.
- E. The design of the subdivision and the type of improvements are not likely to cause serious public health problems, because the review process of the subdivision has taken those concerns into consideration and has found the proposal in conformance with the City of Fremont's policies.
- F. The design of the subdivision and the type of improvements will not conflict with any easements required for the public at large for utilities or access within the proposed subdivision. The applicant is in the process of summarily vacating two right-of-way easements and two emergency vehicle access easements that will no longer be needed as the site redevelops. The City Council will consider the vacation of these easements two days prior (on 12/6/2005) to the consideration of this tract map.

TENETATIVE MAP CONDITIONS OF APPROVAL:

- 1. Approval of this Vesting Tentative Map (Exhibit "B") shall expire 24 months after approval according to the provisions of the State Subdivision Map Act and any amendments thereto and applicable provisions of the Fremont Municipal Code consistent with the State Subdivision Map Act.
- 2. The developer shall install complete street improvements to the centerline of Niles Boulevard across the project frontage. Where the frontage has previously been improved, the developer shall replace existing damaged sidewalk, curb, gutter, and pavement. Required improvements include, but are not limited to: installation of five-foot wide sidewalk, curb, gutter, and pavement; replacement of existing damaged and/or displaced curb, gutter, and pavement, to the centerline of Niles Boulevard; streetlights, and utility laterals. A City standard curb ramp shall be installed at the intersection of Niles Boulevard and Rock Avenue. The extent of repair or replacement of existing Niles Boulevard improvements shall be determined by the City Engineer during the review of subdivision improvement plans.
- 3. The developer shall install complete street improvements to the centerline of Rock Avenue across the project frontage. Where the frontage has previously been improved, the developer shall replace existing damaged sidewalk, curb, gutter, and pavement. Required improvements include, but are not limited to: installation of five-foot wide sidewalk, curb, gutter, and pavement; replacement of existing damaged and/or displaced curb, gutter, and pavement, to the centerline of Niles Boulevard; streetlights, and utility laterals. The extent of repair or replacement of existing

Rock Avenue improvements shall be determined by the City Engineer during the review of subdivision improvement plans.

4. The proposed private street names are subject to review, modification, and approval by the City prior to final map approval.
5. The developer shall comply with the City's Urban Runoff Clean Water Program in accordance with the NPDES requirements issued by the State's Water Quality Control Board.
6. In accordance with the Alameda Countywide NPDES Municipal Stormwater Permit, Order R2-2003-0021, NPDES Permit No. CAS0029831, the property owners shall enter into a maintenance agreement for the long-term operation and maintenance of on-site stormwater treatment measures. The agreement shall run with the land and be recorded at the same time that the final map is recorded.
7. The streetlight plan and joint trench plan shall be submitted by the applicant with the first subdivision plan check for the street improvement plans and final map. The final streetlight plan and joint trench plan shall be completed and approved prior to final map approval.
8. The developer shall request P.G. & E. to commence with the design of the utility underground work for the proposed development after the Planning Commission's approval of Vesting Tentative Tract Map 7647.
9. Precise geometry and location of all driveways shall be subject to approval of the City Engineer.
10. In accordance with Section 66474.9(b) of the Subdivision Map Act, the subdivider shall defend, indemnify, and hold harmless the City of Fremont or its agents, officers, or employees from any claim, action, or proceeding against the City of Fremont or its agents, officers, or employees to attack, set aside, void, or annul, an approval of the City of Fremont, advisory agency, appeal board, or legislative body concerning a subdivision, which action is brought within the time period provided for in Section 66499.37 of the Government Code.
11. The City of Fremont shall notify the subdivider as soon as reasonably possible of any claim, action, or proceeding filed with or against the City to attack, set aside, void or annul the City's approval and the subdivider shall cooperate fully in the defense.
12. All new utility service connections, including electrical and communications, shall be installed underground within appropriate public service or public utility easements.
13. The project plans shall identify Best Management Practices (BMPs) appropriate to the uses conducted on-site to effectively prohibit the entry of pollutants into storm water runoff. The plans will also include storm water measures for operation and maintenance of the project.
14. The developer is responsible for ensuring that all contractors and subcontractors are aware of all storm water quality measures and implement such measures. Failure to comply with the approved construction Best Management Practices will result in the issuance of correction notices, citations, or stop work orders.
15. The developer, at time of initial sale, shall provide to the buyer information on good housekeeping of hazardous products, i.e. proper use and disposal, prohibited discharge practices, etc. Informational materials will be furnished by the City.
16. A home owners association or other mechanism acceptable to the City is to be established, formed, and is to covenant and be responsible for the maintenance of all commonly owned facilities, which are not maintained by the public utility agency. The developer is responsible for maintenance for all facilities during the subdivision warranty period.
17. The owner of private streets and storm drains shall prepare and implement a plan for street sweeping of paved private roads and cleaning of all storm drain inlets.

18. All on-site storm drains must be cleaned at least once a year immediately prior to the rainy season. Additional cleaning may be required by the City of Fremont.
19. The property owner is responsible for litter control and for sweeping of all paved surfaces. Sidewalks, parking lots, and other paved areas must be swept regularly to prevent the accumulation of litter and debris. If pressure washed, debris must be trapped and collected to prevent entry into the storm drain system. No cleaning agent may be discharged to the storm drain.
20. All on-site storm drains are to be cleaned prior to building occupancy and also be cleaned each year immediately before the beginning of the rainy season (October 15). The City Engineer may require additional cleaning.
21. All landscaping shall be properly maintained and shall be designed with efficient irrigation practices to reduce runoff, promote surface filtration, and minimize the use of fertilizers and pesticides, which can contribute to runoff pollution.
22. The developer and project civil engineer shall work with staff to incorporate, into the design, additional storm water best management practices (BMPs) to treat storm water runoff before it is discharged into the public storm drain system. Examples of potential storm water BMPs include bio-swales, micro-detention ponds, and permeable pavement. Details of the storm water BMPs shall be included with the preliminary grading plan application.
23. Above ground architectural and building features that project over proposed property lines shall be permitted on townhouse units by easement recorded on the final map. Such features include, but are not limited to, eaves, bay windows, balconies, porches, landings, and stairways. The details of these easements, including dimensions and descriptions, shall be included on the tentative map. Foundations for townhouse units must be contained within the individual lots.
24. Unless otherwise dimensioned on the tentative map, the developer shall dedicate a minimum six-foot wide public service easement along the Niles Boulevard and Rock Avenue street frontages.

SUBDIVIDER PLEASE NOTE:

The fees, dedications, reservations and/or other exactions imposed on this project are those listed in the foregoing conditions of this tentative tract map approval. The subdivider is hereby notified that the 90-day period in which the subdivider may protest these fees, dedications, reservations and other exactions pursuant to Government Code Section 66020(a) begins on the date of approval of this tentative tract map. If the subdivider fails to file a protest within this 90-day period complying with all the requirements of Government Code Section 66020, the subdivider will be legally barred from later challenging such actions.

Exhibit "3"
PLN2006-00002
(Preliminary Grading Plan and Private Street)
Rock & Niles Townhomes, 36153 Niles Boulevard
(APN 507-0062-003-09, Abraham; and, 507-0062-004-13, Sinodinos)
Planning Commission Hearing on December 8, 2005

FINDINGS:

The findings below are made on the basis of information contained in the staff report and information from the public hearing to the Planning Commission dated December 8, 2005, incorporated herein by reference:

- (a) The proposed project described in the application will not have an appearance, due to the grading, excavation, or fill, substantially and negatively different from the existing natural appearance.
- (b) The proposed project described in the application will not result in geologic or topographic instability on or near the site. A peer reviewed geotechnical evaluation of the site will be required prior to the issuance of a building permit.
- (c) The proposed project described in the application will not endanger public sewers, storm drains, watercourses, streets, street improvements, or other property; will not interfere with existing drainage courses; and will not result in debris being deposited on any public way. The applicant is required to submit a plan to control erosion and siltation during and after construction for review and approval by the City Engineer.
- (d) The proposed development is not in any special studies zone nor is there evidence of presence of any fault or active slides per official maps issued by the U.S. Geological Survey and the California Division of Mines and Geology.
- (e) The proposed project described in the application will not unacceptably affect the health, safety, and or welfare of adjacent residents or landowners, nor the citizens of Fremont.
- (f) The most logical development of the land requires private street access because the physical character of the project is more amenable to the less intense right of way required of a private street.
- (g) The development of the land is well defined because the design of the subdivision and proposed improvements are in conformance with the City of Fremont's applicable codes and policies.

PRELIMINARY GRADING PLAN CONDITIONS OF APPROVAL:

- 1. The project shall conform with staff amended Exhibit "C" (Preliminary Grading Plan), all conditions of approval set forth herein, and all conditions of approval of Vesting Tentative Tract Map 7647 (PLN2006-00002).
- 2. Approval of this Preliminary Grading Plan does not extend to the final detailed design approval necessary to be accomplished in connection with the development plans.
- 3. Approval of this Preliminary Grading Plan shall run concurrent with the approval and subsequent extensions of Vesting Tentative Tract Map 7647 (PLN2006-00002). Approval of this Preliminary Grading Plan shall terminate upon the expiration of Vesting Tentative Tract Map 7647.
- 4. A grading permit issued for the project shall be in accordance with the Grading, Erosion, and Sediment Control Ordinance (Chapter 4, Title VIII of the Municipal Code). Grading shall be subject to the approval of the City Engineer.
- 5. The applicant shall provide for a functional system to control erosion and siltation during and after grading subject to review and approval by the City Engineer or Alameda County Flood Control and Water Conservation District. An erosion and sediment control plan shall be included as part of the grading plans.

6. Site grading shall not obstruct natural flow from abutting properties or divert drainage from its natural watershed.
7. A disposal site for the off-site haul dirt materials or source for the import fill shall be approved by the City prior to the approval of the grading permit. The off-site haul truck route for the excess dirt or import fill shall be subject to the approval of the City Engineer.
8. Prior to issuance of a grading permit for land disturbance greater than one acre, the developer is to provide evidence that a Notice of Intent has been filed and with the State of California Water Resources Control Board. Evidence shall include the WDID number assigned by the State. The developer is responsible for insuring that all contractors are aware of all storm water quality measures contained in the Storm Water Pollution Prevention Plan (SWPPP).
9. The applicant shall submit a detailed soils report, including recommendations regarding pavement structural sections, prepared by a qualified soils engineer registered by the State of California.
10. Grading operations shall be in accordance with recommendations contained in the required soils report and shall be supervised by an engineer registered in the State of California to do such work.
11. Proposed curb elevations for the street system shall not be less than 1.25 feet above the hydraulic grade line (design water surface) and at no point should the curb grade be below the energy grade line. On-site grades are to be a minimum of 0.75 feet above the hydraulic grade line.
12. The project storm drain design shall be subject to review and approval of both the City Engineer and the Alameda County Flood Control and Water Conservation District.

PRIVATE STREET CONDITIONS:

13. The private streets shall conform with Exhibit "C", attached hereto and made a part hereof and all conditions of approval of Vesting Tentative Map 7647 (Exhibit "C").
14. This Private Street (PLN2006-00002) is being conditionally approved based on the accuracy of the information shown on Exhibit "C" and submitted with the Private Street application. If any of the information is shown to be inaccurate subsequent to approval of the Private Street by the City, such inaccuracy may be cause for invalidating this approval.
15. The private street names are subject to modification prior to final map approval. If needed, the developer shall work with staff to provide different street names, subject to staff review and approval.
16. A Private Vehicle Access Way (PVAW) and a Public Utility Easement (PUE) are to be established over the entire private street right-of-way. The PUE dedication statement on the final map is to recite that the PUE is available for, but not limited to, the installation, access and maintenance of sanitary and storm sewers, water, electrical and communication facilities.
17. Access considerations for the on-site circulation system require space to be reserved for the movement of fire-fighting and emergency vehicles for the protection of both private property and the public. Dedication of emergency vehicle access easements (EVAE) on the final map over the private street right-of-way will be required. The easement geometry shall be subject to the approval of the City Engineer.
18. Fire hydrants are to be located along the private street as determined by the Fremont Fire Department.
19. Deed restrictions are to be recorded concurrently with the final map to create a mandatory Home Owner's Association or any other mechanism acceptable to the City for those lots with private street frontage which is to covenant and be responsible for the following:
 - a. Maintenance of the facilities in the private street which are not maintained by a public utility agency, except all utility work resulting from backfill failure is to be the responsibility of the Home Owner's Association.

- b. Payment of the water and private street lighting (maintenance and energy) bills.
 - c. Maintenance, repair, replacement and removal of blockages in all building sewers. Maintenance of the building sewers includes repair of any trench failures and/or trench surface material failures.
 - d. Maintenance and "knock-down" repair of fire hydrants and water facilities along the private street is to be done by the utility agency at the expense of the Home Owner's Association. The Home Owner's Association is to be responsible for repainting any fire hydrants along the private street.
20. Each buyer is to sign an acknowledgment that he/she has read the constitution and bylaws of the Home Owner's Association and the conditions, covenants and restrictions applying to the development.
21. Private street grading and drainage shall be done according to public street standards, subject to review and approval by the City Engineer prior to final map approval.
22. Pursuant to FMC Section 8-1522 and 8-3107, the subdivider is to improve prior to final map approval or agree to improve within one year of final map approval, the private street frontage of the map. No permanent improvement work is to commence until improvement plans and profiles have been approved by the City Engineer. Improvements are to be installed to permanent line and grade in accordance with the City's subdivision improvement standards and to the satisfaction of the City Engineer. The minimum improvements which the subdivider is normally required to construct or agree to construct prior to acceptance and approval of the final map by the City are as set forth in the City Development Policy for Private Vehicle Access ways. Improvements to be constructed include:
- a. Curb and gutter
 - b. Driveways
 - c. Street paving
 - d. Private Street monuments
 - e. Electroliers (wired underground)
 - f. Drainage facilities
 - g. Signs
 - h. Fire hydrants
23. The private street pavement shall be designed on the basis of a traffic index using predicted traffic generation and a thirty-year pavement design life. In no case shall the traffic index be less than 5.5. Asphalt concrete surfacing to be treated with a seal coat of the type and amount required by the City Engineer. Pavement design sections shall be subject to approval of the City Engineer.
24. Safety lighting is to be provided on the private street. Lights shall utilize "vandal resistant" enclosures and shall have sufficient power and spacing to provide an average maintained foot-candle level of 0.12.
25. A signpost, to which is attached a sign having an area of at least fifteen inches by twenty-one inches, is to be installed at or near the private street entrance. The name of the private street is to be placed on this sign in clearly legible four-inch letters. The sign is to have painted, in at least one-inch letters, "Private Property. Not dedicated for public use."
26. Approval of Private Street (PLN2006-00002) shall become effective upon final map approval.